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10/596,258

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Ikuo Tachibana

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EXAMINER

HANRAHAN, BENEDICT L

ART UNIT

PAPER NUMBER

3761

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,258	Applicant(s) TACHIBANA, IKUO	
	Examiner BENEDICT L.C. HANRAHAN	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims Status

1. Claim 8 is new, and claims 1-8 are pending.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be "material to patentability as defined in 37 CFR 1.56."

The oath contains a "the" in between "material to" and "patentability", which makes it defective. Please correct.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono et al. (EP 0 763 353 A2; hereinafter Ono) in view of Roehrl et al. (US 2006/0259001; hereinafter Roehrl).

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5. Regarding claims 1, 2 and 8, Ono discloses a worn article that is capable of being worn by a user or wearer. As schematically shown in Fig 2, the article comprises a fitting portion adapted to fit around a torso of a wearer and having an interior side for facing the torso of the wearer and an exterior side opposite the interior side (2 including 20A and 20B), an absorbent portion (3) adapted for covering a crotch of the wearer and absorbing body fluid from the wearer, and a cover sheet (25, 26, and 27), wherein the absorbing portion (3) includes a first end portion (18 in Fig. 2) and a second end portion (19 in Fig. 2) that are connected to the fitting portion (2 including 20A and 20B) on the exterior side of the fitting portion (Fig 2 shows that 18 and 19 are on the exterior of 20A and 20B). In Figure 2, the cover sheet (25, 26, and 27) is covering at least a portion of an exterior of the first end portion (18) which is opposite to a surface facing the skin surface of the wearer during wearing. The first end portion (18 in Fig 2) of the absorbent portion (3 in Fig 2) is detachable from the fitting portion to allow for inspection of the worn article during wearing because they are currently attached as shown in Figure 2 by mechanical fasteners 36 (Fig 2).

Ono does not specifically disclose wherein, when the article is worn, the cover sheet is at least partially removable to expose the exterior surface of the first end portion of the absorbent portion to an exterior of the worn article for detaching the absorbent portion from the fitting portion. However, Roehrl teaches a disposable absorbent article with intended breaking lines 20 (Fig 7) on the coversheet 22 (Fig 7) so that it is tearable in order to inspect the disposable diaper (Paragraphs 6 and 39). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Ono's reference, to include intended break lines, as

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suggested and taught by Roehrl, for the purpose of being able to inspect the diaper, while the user is still wearing it, to see if it has been soiled or not.

Furthermore, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

6. Regarding claim 3, as schematically shown in Fig. 2, the worn article in Ono et al. also comprises an abdominal-side (6) and a back-side (7) of the fitting portion (2 including 20A and 20B) in Fig. 2. The first end (18) of the absorbent portion (3) is connected to the abdominal- side (6) of the fitting portion (2 including 20A and 20B) in Fig. 2. The second end portion (19 in Fig. 2) of the absorbent portion (3) is connected to the back-side portion (7 in Fig. 2) of the fitting portion (2 including 20A and 20B). The first end portion (18) is detachably touch-fastened to the fitting portion (2 including 20A and 20B) through fasteners (36A and 36B). The cover sheet (25, 26, and 27) is covering the first end portion (18 in Figs. 2 and 3) of the absorbent portion (3) and is tearable (The combination of Ono and Roehrl disclosed above teaches that the cover sheet is tearable).

7. Regarding claim 4, the worn article in Ono et al. disclose in the touch-fastened first end portion 18 (Fig 2), an inner surface of the absorbent portion 43 (Fig 2) is facing an outer surface of the abdominal-side portion of the fitting portion (20A and 20B), and an inner surface of the cover sheet 25 (Fig 2) is facing an outer surface of the absorbent portion 44 (Fig 2); and the fitting portion (2 including 20A and 20B), the absorbent portion 3 and the cover sheet (25, 26, and 27) are layered in this order starting from an inner side in a position corresponding to the first end portion.

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8. Regarding claim 5, the Ono et al. disclose a tearable portion for tearing the cover sheet is formed in the cover sheet by processing the cover sheet so that at least a portion of the first end portion of the absorbent portion will be exposed to an exterior of the article when the cover sheet is torn along the tearable portion (The combination of Ono and Roehrl disclosed above teaches that the cover sheet is processed to be tearable).

9. Regarding claim 6, the Ono et al. worn article comprises a cover sheet (25, 26, and 27) which covers at least an upper edge of the first end portion (18) of the absorbent portion (3).

10. Regarding claim 7, as best understood without detailed written support, the Ono and Roehrl combination discloses the structure of the absorbent portion (3) sandwiched between the cover sheet (25, 26, and 27) that is obviously tearable and the "web" or fitting portion (2 including 20A and 20B), where the "web" is best understood by the examiner as material forming the fitting portion (2 including 20A and 20B). The method as claimed, therefore, would be obvious during operation and use of the Ono and Roehrl combination device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENEDICT L.C. HANRAHAN whose telephone number is (571)270-7854. The examiner can normally be reached on Monday-Friday, 8AM-5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. L. H./

Examiner, Art Unit 3761

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763